IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.3217 of 2011 (O&M)
Date of Decision: August 02, 2016

Gram Panchayat of Village Amarpur Jorasi, Tehsil Narnaul, District Mahendergarh

...Appellant

Versus

Marru Ram & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Amit Prashar, Advocate for
Mr.Binat Sharma, Advocate,
for the appellant.

Mr.Jai Veer Yadav, Advocate,
for the respondents.

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AMIT RAWAL, J. (Oral)

Appellant-defendant-Gram Panchayat is aggrieved of the findings rendered by the Lower Appellate Court, whereby the suit of the respondent-plaintiffs challenging the orders of the Revenue Courts passed in proceedings initiated under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana, has been decreed.

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Mr.Amit Prashar Advocate for Mr.Binat Sharma, learned

counsel for the appellant-Gram Panchayat submits that there is delay of 375 days in filing the appeal as the village Sarpanch was belonging to rival party and owing to this fact, appeal could not be filed within the period of limitation. No document in support of the aforementioned averment and assertion has been placed on record. In my view, once the Gram Panchayat was contesting the case diligently throughout before the trial Court and the Lower Appellate Court, what prevented the appellant to file the appeal within limitation is lacking.

As regards the question on merit of the suit is concerned, Mr.Prashar has raised argument that the judgment and decree of the trial Court is perfectly legal and justified and is in consonance with the provisions of Section 13 of 1961 Act, for, the respondent-plaintiffs had set up a title and jurisdiction of the Civil Court is barred, but the Lower Appellate Court ignoring the aforementioned plea, has decreed the suit by relying upon the jamabandies, thus, there is gross misreading and, thus, urges this Court for setting-aside of the judgment and decree of the Lower Appellate Court by restoring the judgment and decree of the trial Court.

He further submits that the land belongs to shamlat and, therefore, setting up a title under Section 13 of 1961 Act would be irrelevant.

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Mr.Jai Veer Yadav, learned counsel for the respondent-plaintiffs submits that the provision with regard to the jurisdiction of the Civil Court as envisaged under Section 13 of 1961 Act would apply to the land which is falling in the category of "abadi deh". In this context, he has referred to the definition of "Abadi Deh" as prescribed in Section 2(f) of 1963 Act and, thus, urges this Court for affirming the findings of the Lower Appellate Court.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Prashar, vis-a-vis application seeking condonation of delay and on merits of the appeal, for, on going through the definition of Section 2(g), Abadi deh is not considered to be shamlat, thus, the proceedings initiated under Section 7 of 1961 Act could not have been initiated. It is in this background of the matter, the respondent-plaintiffs challenged the proceedings by filing the suit. He had two options either to file a writ petition under Article 226 of the Constitution of India or had resorted to the provisions of Section 9 CPC.

The embargo of Section 13 of 1961 Act would not apply, for, as it envisaged that no person is entitled to claim ownership of the shamlat land. Once the revenue record reflects the character and nature of the property as abadi deh, there was no occasion for the Court below,

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much less, trial Court to non-suit the plaintiffs for lack of jurisdiction, thus, in my view, the Lower Appellate Court, being the last court of fact and law, has not misconstrued and misread the revenue record.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree of the Lower Appellate Court.

The appeal is dismissed on the ground of limitation and as well as on merits.

August 02, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**

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